

SENATE BILL NO. 312

INTRODUCED BY G. LIND, COBB, BUTCHER, WISEMAN, GILLAN, SCHMIDT, KOTTEL, KLOCK,
BECKER, OLSON, EVERETT, DRISCOLL, CAMPBELL, GRINDE, AUGARE, STOKER, MENDENHALL,
LAIBLE, PERRY, ELLIOTT, BRANAE, STAHL, BLASDEL

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING ECONOMIC CREDENTIALING IN EXCHANGE FOR
HOSPITAL OR MEDICAL STAFF PRIVILEGES; PROVIDING DEFINITIONS; ~~AND AMENDING SECTION~~
SECTIONS 50-5-105 AND 50-5-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A
TERMINATION DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Economic credentialing of physicians prohibited -- definitions.** (1) A
hospital may not engage in economic credentialing by:

(a) EXCEPT AS MAY BE REQUIRED FOR HOSPITAL MEDICARE CERTIFICATION OR FOR ACCREDITATION BY THE JOINT
COMMISSION ON ACCREDITATION OF HEALTHCARE ORGANIZATIONS, requiring a physician requesting medical staff
membership or medical staff privileges to agree to make referrals to that hospital or to any facility related to the
hospital;

(b) EXCEPT AS MAY BE REQUIRED BY MEDICAL STAFF BYLAWS, refusing to grant staff membership or medical
staff privileges or conditioning or otherwise limiting a physician's medical staff participation because the physician
or a partner, associate, or employee of the physician:

(i) provides medical or health care services at, has an ownership interest in, or occupies a leadership
position on the medical staff of a different hospital, hospital system, or health care facility; or

(ii) participates or does not participate in any particular health plan; or

(c) refusing to grant participatory status in a hospital or hospital system health plan to a physician or a
partner, associate, or employee of the physician because the physician or partner, associate, or employee of the
physician provides medical or health care services at, has an ownership interest in, or occupies a leadership
position on the medical staff of a different hospital, hospital system, or health care facility.

(2) NOTWITHSTANDING THE PROHIBITIONS IN SUBSECTION (1), A HOSPITAL MAY REFUSE TO APPOINT A PHYSICIAN
TO THE GOVERNING BODY OF THE HOSPITAL OR TO THE POSITION OF PRESIDENT OF THE MEDICAL STAFF OR PRESIDING

OFFICER OF A MEDICAL STAFF COMMITTEE IF THE PHYSICIAN OR A PARTNER, ASSOCIATE, OR EMPLOYEE OF THE PHYSICIAN PROVIDES MEDICAL OR HEALTH CARE SERVICES AT, HAS AN OWNERSHIP INTEREST IN, OR OCCUPIES A LEADERSHIP POSITION ON THE MEDICAL STAFF OF A DIFFERENT HOSPITAL, HOSPITAL SYSTEM, OR HEALTH CARE FACILITY.

~~(2)~~(3) For the purposes of this section, the following definitions apply:

(a) "Economic credentialing" means the ~~use of economic criteria unrelated to quality of care or professional competence in determining a physician's qualifications for initial or continuing hospital medical staff membership or privileges~~ DENIAL OF A PHYSICIAN'S APPLICATION FOR STAFF MEMBERSHIP OR CLINICAL PRIVILEGES TO PRACTICE MEDICINE IN A HOSPITAL ON CRITERIA OTHER THAN THE INDIVIDUAL'S TRAINING, CURRENT COMPETENCE, EXPERIENCE, ABILITY, PERSONAL CHARACTER, AND JUDGMENT. THIS TERM DOES NOT MEAN USE BY THE HOSPITAL OF:

(I) EXCLUSIVE CONTRACTS WITH PHYSICIANS;

(II) MEDICAL STAFF ON-CALL REQUIREMENTS;

(III) ADHERENCE TO A FORMULARY APPROVED BY THE MEDICAL STAFF; OR

(IV) OTHER MEDICAL STAFF POLICY ADOPTED TO MANAGE HEALTH CARE COSTS OR IMPROVE QUALITY.

(b) "Health care facility" has the meaning provided in 50-5-101 and includes diagnostic facilities.

(c) "Health plan" means a plan offered by any person, employer, trust, government agency, association, corporation, or other entity to provide, sponsor, arrange for, indemnify another for, or pay for health care services to eligible members, insureds, enrollees, employees, participants, beneficiaries, or dependents, including but not limited to a health plan provided by an insurance company, health service organization, health maintenance organization, preferred provider organization, self-insured health plan, captive insurer, multiple employee welfare arrangement, workers' compensation plan, medicare, or medicaid.

(d) "Physician" has the meaning provided in 37-3-102.

(4) FOR THE PURPOSES OF THIS SECTION, THE PROVISIONS OF 50-5-207 DO NOT APPLY.

Section 2. Section 50-5-105, MCA, is amended to read:

"50-5-105. Discrimination prohibited. (1) All phases of the operation of a health care facility must be without discrimination against anyone on the basis of race, creed, religion, color, national origin, sex, age, marital status, physical or mental disability, or political ideas.

(2) (a) A health care facility may not refuse to admit a person to the facility solely because the person has an HIV-related condition.

(b) For the purposes of this subsection (2), the following definitions apply:

(i) "HIV" means the human immunodeficiency virus identified as the causative agent of acquired immunodeficiency syndrome (AIDS) and includes all HIV and HIV-related viruses that damage the cellular branch of the human immune or neurological system and leave the infected person immunodeficient or neurologically impaired.

(ii) "HIV-related condition" means any medical condition resulting from an HIV infection, including but not limited to seropositivity for HIV.

(3) A person who operates a facility may not discriminate among the patients of licensed physicians. The free and confidential professional relationship between a licensed physician and patient must continue and remain unaffected.

(4) Except for a hospital that employs its medical staff, a hospital considering an application for staff membership or granting privileges within the scope of the applicant's license may not deny the application or privileges because the applicant is licensed under Title 37, chapter 6.

~~(5) This Except for the economic credentialing prohibitions provided in [section 1], this section does not preclude a hospital from limiting membership or privileges based on education, training, or other relevant criteria."~~

SECTION 3. SECTION 50-5-207, MCA, IS AMENDED TO READ:

"50-5-207. Denial, suspension, or revocation of health care facility license -- provisional license.

(1) The department may deny, suspend, or revoke a health care facility license if any of the following circumstances exist:

(a) The facility fails to meet the minimum standards pertaining to it prescribed under 50-5-103.

(b) The staff is insufficient in number or unqualified by lack of training or experience.

(c) The applicant or any person managing it has been convicted of a felony and denial of a license on that basis is consistent with 37-1-203 or the applicant otherwise shows evidence of character traits inimical to the health and safety of patients or residents.

(d) The applicant does not have the financial ability to operate the facility in accordance with law or rules or standards adopted by the department.

(e) There is cruelty or indifference affecting the welfare of the patients or residents.

(f) There is misappropriation of the property or funds of a patient or resident.

(g) There is conversion of the property of a patient or resident without the patient's or resident's consent.

(h) Any provision of parts 1 through 3, except [section 1], is violated.

(2) The department may reduce a license to provisional status if as a result of an inspection it is determined that the facility has failed to comply with a provision of part 1 or 2 of this chapter or has failed to comply with a rule, license provision, or order adopted or issued pursuant to part 1 or 2.

(3) The denial, suspension, or revocation of a health care facility license is not subject to the certificate of need requirements of part 3.

(4) The department may provide in its revocation order that the revocation is in effect for up to 2 years. If this provision is appealed, it must be affirmed or reversed by the court."

NEW SECTION. Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 50, chapter 5, and the provisions of Title 50, chapter 5, apply to [section 1].

NEW SECTION. SECTION 5. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE ON PASSAGE AND APPROVAL.

NEW SECTION. SECTION 6. TERMINATION. [THIS ACT] TERMINATES JUNE 30, 2009.

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